

**A RESOLUTION
BY CITY UTILITIES COMMITTEE**

07- *P* -0567

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SOCCER IN THE STREETS, INC., A NON-PROFIT ORGANIZATION, TO ALLOW FOR THE USE OF CERTAIN CITY OF ATLANTA PROPERTY LOCATED IN THE VINE CITY COMMUNITY FOR THE PURPOSE OF PASSIVE RECREATIONAL USES ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to 03-O-0311, the City of Atlanta's ("City") Department of Watershed Management ("Watershed") acquired certain property in the Vine City community in Atlanta, Georgia, said property consisting of a city block, located along Rock St on the Southern boundary, Vine St on the western boundary, Tyler St. on the northern boundary, and Walnut St. on the eastern boundary ("Property"), said Property being acquired for purpose of constructing a water and sewer project and being maintained as green space; and

WHEREAS, Soccer In The Streets, Inc. ("SITS") is a Georgia non-profit organization, whose purpose is to sponsor and provide soccer activities for children within the inner city; and

WHEREAS, SITS is seeking to start a youth soccer program in the Vine City community; and

WHEREAS, the Department and SITS desire to enter into an agreement with the City to allow for the temporary use of the Property for the soccer activities operated by SITS; and

WHEREAS, SITS acknowledges that the use of the Property is temporary until such time that the City begins a sewer and storm water relief project ("Project") located on the Property and such activities shall be consistent and subject to the Watershed's intended uses for the Property; and

WHEREAS, the Commissioner of the Department of Watershed Management has recommended the execution of an agreement with SITS.

THE CITY COUNCIL OF THE CITY OF ATLANTA, GEORGIA, HEREBY RESOLVES, that the Mayor is authorized to execute a Memorandum of Understanding ("MOU") with Soccer In The Streets, Inc. ("SITS") for the temporary use of the Property (as described above) owned by the City of Atlanta for the benefit of the Department of Watershed Management, to provide a youth soccer program in the Vine City area at no cost to SITS.

BE IT FURTHER RESOLVED that, the term of this MOU will be for a period of two (2) years from the effective date of the MOU or upon notice from the City that it is needs to utilize the Property for a water, sewer or storm water project, whichever occurs first; and

BE IT FURTHER RESOLVED that the MOU and uses permitted through this legislation shall be expressly subject to and consistent with the Watershed's intended uses for the Property; shall not in any way interfere with Watershed's intended uses for the Property, which said uses are expressly reserved; and such permitted uses shall not be deemed in any way to be a dedication to the public as a park.

BE IT FURTHER RESOLVED, that the City Attorney is directed to prepare an appropriate MOU to be executed by the Mayor in substantial form as the MOU attached as Exhibit "A".

BE IT FURTHER RESOLVED, that the MOU will not become binding on the City and the City will incur no obligation or liability under it until it has been executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney and delivered to SITS.

BE IT FINALLY RESOLVED that all ordinances in conflict herewith are hereby waived.

Part II: Legislative White Paper:

A. To be completed by Legislative Counsel:

Committee of Purview: City Utilities

Caption: A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SOCCER IN THE STREETS, INC., A NON-PROFIT ORGANIZATION, TO ALLOW FOR THE USE OF CERTAIN CITY OF ATLANTA PROPERTY LOCATED IN THE VINE CITY COMMUNITY FOR THE PURPOSE OF PASSIVE RECREATIONAL USES ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; AND FOR OTHER PURPOSES.

Council Meeting Date: April 16, 2007

Requesting Dept.: Watershed Management

B. To be completed by the department :

1. Please provide a summary of the purpose of this legislation (Justification Statement).

The purpose of this legislation is to authorize and agreement that will allow the non profit organization "Soccer in the Streets" to use vacant land in Vine City owned by the Department of Watershed mangement.

2. Please provide background information regarding this legislation.

Soccer in the Streets, a non profit corporation, is seeking to start a youth soccer league in the Vine City area. The non-profit and the community is requesting to use a parcel fo land owned by the Department of Watershed Management to hold practices and games. The agreement authorized by this legislation will define the time and terms of the land uage.

3. Fiscal Impact: none

This Legislative Request Form Was Prepared By: Maisha Land

**DRAFT MOU BETWEEN CITY OF ATLANTA AND SITS
FEBRUARY 28, 2007**

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ATLANTA AND BBI**

This Memorandum of Understanding ("MOU"), dated this ____ day of _____, 2007, is between the City of Atlanta ("City") and Soccer In The Streets, Inc. ("SITS") (collectively, "the Parties").

Background

The City of Atlanta, Department of Watershed Management ("Watershed") acquired certain real property, said property consisting of a city block within the Vine City community in Atlanta, Georgia, located along Rock St. on the Southern boundary, Vine St. on the western boundary, Tyler St. on the northern boundary, and Walnut St. on the eastern boundary ("Property"), which property was acquired for the purpose of constructing a sewer project and maintaining the Property as green space.

SITS is a Georgia non-profit corporation whose purpose is purpose is to sponsor and provide soccer programs for children within the inner city. SITS has utilized open spaces within inner cities in various states, including local programs in the metropolitan Atlanta area to provide soccer programs for children.

The City and SITS now desire to make the Property temporarily available for soccer programs through SITS subject to and conditioned on utilizing the property consistent with Watershed's intended use of the Property. The Parties desire to enter into an MOU to effectuate the utilization of the Property for soccer programs, as described in the terms and conditions below.

NOW THEREFORE in consideration of the mutual covenants contained herein as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

Section 1. Use of Property

1.1. The City hereby grants SITS permission to utilize the Property for the purpose of providing soccer programming to children from the ages of (insert) at no cost to SITS. Such soccer programming shall include soccer instruction, soccer games and scrimmages and general soccer recreation on the Property ("Soccer Activity"). All activities shall be conducted in such a manner so as to provide as little disruption to the surrounding area and in compliance with all applicable laws. Under no circumstances shall SITS permit illegal activity to occur in conjunction with the Soccer Activity nor shall alcoholic beverages be permitted on the Property in conjunction with the Soccer Activity.

1.2. SITS shall be permitted to place only temporary, removable and non-permanent facilities and equipment on the Property to facilitate the Soccer Activity (for

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example, temporary soccer goals and benches), after express permission from the Commissioner of Watershed or his designee. SITS shall be solely responsible for the maintenance and security of such fixtures and shall remove such fixtures upon the termination of this MOU.

1.3. SITS shall be permitted to improve the Property in such a manner that would facilitate and promote the Soccer Activity (segregating the property into individual fields with temporary equipment, and planting grass) at the sole cost of SITS. No permanent fencing is permitted. Such activity shall not include any land disturbing activities, using mechanized or other equipment that would require a land disturbance permit. All such activity by SITS on the Property shall be consistent with and shall not interfere with Watershed's intended use of the Property.

1.4. The City shall maintain its authority to make final decisions regarding the Soccer Activity and shall exercise this authority in the spirit of good faith cooperation with SITS. Such decisions shall be made by the Commissioner of the Department of Watershed Management. The City expressly reserves all rights and interests to its ownership of the Property and superior use of the Property for its intended use for water and sewer purposes and in no way relinquishes such interest by way of this MOU. SITS expressly acknowledges that the permissions granted in this MOU is in no way constitutes a dedication or use of the Property as a public park; and further acknowledges that such permissions granted in this MOU are expressly conditioned and subject to Watershed's interest and uses of the Property.

1.5. Project proposals and implementation plans for improvements and other initiatives regarding the Property shall be prepared by SITS, based on available funds. SITS shall comply with all of the City's permitting and all other applicable state and local laws and regulations for any such improvements. The City shall have the right to oversee and inspect all work performed on and around the Property. The quality and safety of the work performed by or on behalf of SITS is the responsibility of SITS and not the City.

1.6. SITS shall have sole responsibility for raising any funds necessary for Property Improvements or Soccer Activity.

1.7. SITS shall be responsible for any claim, damage, loss or expense arising from the Soccer Activity on the Property. SITS agrees to obtain and maintain insurance as set forth in Exhibit "A" and agrees to hold harmless and indemnify the City, its officers, agents and employees from any and all claims against the City, its officers, agents, and employees which arise out of any negligent act or omission of or any condition created or maintained by SITS, subcontractors, employees or any of their officers, agents or employees (including SITS). Nothing in this provision shall be interpreted to limit the indemnification or hold harmless requirements to the limits of the insurance requirements of this MOU.

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1.8. Any personnel employed by or volunteering on behalf of SITS shall be deemed "employees" or "volunteers" respectively of SITS, and shall not be deemed employees or volunteers of the City. SITS shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work.

1.9 SITS shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by SITS and all costs incurred by SITS, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this MOU, unless otherwise specified by applicable law. The City of Atlanta or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit SITS's records and accounts. Any such audit will be commenced within one year of the expiration of this MOU.

1.10. The City acknowledges and the Parties agree that the Soccer Activities and improvements contemplated by this MOU will substantially improve the use of the Property from its present vacant status and will provide great benefits to the Vine City community. The City further acknowledges and agrees that such improvements are sufficient consideration for the rights and permissions granted herein.

1.11. The City will provide general landscaping maintenance to the Property at no cost to SITS, however, specific landscaping and grounds maintenance needed to condition the Property for Soccer Activity will be the responsibility of SITS at the cost of SITS.

1.12. The City shall tender the Property for SITS's use in an "as-is" condition. The City shall not be responsible for any improvements to the Property, such as utilities, etc., that SITS may deem necessary for the Soccer Activity.

1.13. SITS shall maintain the Property in a neat and orderly manner.

1.14. SITS acknowledges and agrees that the use of the Property is temporary until such time that the City identifies a need to utilize the Property for construction of a water or sewer project or otherwise a water or sewer use ("City Project") which, in the City's determination and discretion, would require SITS to discontinue its use. It is estimated that a City Project will commence two (2) years from the date of this MOU. Upon a determination by Watershed that Watershed needs to utilize the Property for a City Project and that the uses and permissions granted herein are inconsistent with Watershed's needs for the Property, Watershed shall provide 60 days written notification to SITS to terminate this MOU, at which time SITS shall cease all Soccer Activity, vacate the Property and remove all temporary fixtures, equipment and belongings of SITS from the Property. At such time, SITS shall leave the Property in as good condition as existed at the time it assumed use of the Property.

Section 2. Term of MOU.

The term of this MOU shall be for a period of two years from the effective date of this MOU or upon notice from the City pursuant to Section 1.14 above, whichever occurs first.

Section 3. Termination of MOU and Default.

The City may terminate this MOU upon 30 days written notice in the event that the City determines that SITS has materially defaulted on fulfilling the terms and obligations of this MOU.

Section 4. Miscellaneous. Provisions.

ENTIRE MOU.

This MOU supersedes all prior discussions and Agreements or MOUs among the parties with respect to the subject matter hereof. This MOU shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this MOU is executed and specifically referencing such a modification or amendment.

BINDING EFFECT

This MOU shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.

SEVERABILITY

In the event any provision or portion of this MOU is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.

FURTHER ASSURANCES

On and after the Effective Date, each Party shall, at the request of any other, make, execute and deliver or obtain and deliver all such certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which any Party may reasonably require to effectuate the provisions and the intentions of this MOU.

CAPTIONS

DRAFT MOU BETWEEN SITS AND CITY OF ATLANTA
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All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this MOU, shall not supplement, limit or otherwise vary the text of this MOU in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular paragraphs and subparagraphs by number refer to the text of the paragraphs or subparagraphs so numbered in this MOU.

GENDER

Words of any gender used in this MOU shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

EXHIBITS

Each and every exhibit referred to or otherwise mentioned in this MOU is attached to this MOU and is, and shall be, construed to be made a part of this MOU by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to or otherwise mentioned.

REFERENCES

All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraphs of this MOU. Unless otherwise specified in this MOU, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like or similar import shall be deemed to refer to this MOU as a whole, and not to any particular paragraph or subparagraph hereof.

RIGHTS CUMULATIVE

Except as expressly limited by the terms of this MOU, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

NOTICES

All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air Note or overnight courier, or by hand delivery by reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective

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Parties may send to the other Parties any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

To City:	Commissioner of Watershed Management Suite 5400 55 Trinity Avenue Atlanta, Georgia 30303
and	Chief Operating Officer Office of the Mayor, Suite 2400 55 Trinity Avenue Atlanta, Georgia 30303
with a copy to:	City Attorney 68 Mitchell St., SW Suite 4100 Atlanta, Georgia 30303
SITS	2323 Perimeter Park Drive, NE Atlanta, Ga 30341

AMENDMENT AND ASSIGNMENT

The interest of the parties may not be assigned without prior written consent from the other party. This MOU shall not be amended except in writing by both parties.

GOVERNING LAW

This MOU, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of laws thereof. The Parties hereby fix jurisdiction and venue for any action brought with respect to this MOU in Fulton County, Georgia.

NO PARTNERSHIP

This MOU shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities on any Party. Furthermore, no Party shall have any right, power or authority to enter into any MOU or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.

TIME OF ESSENCE

Time is and shall be of the essence in this MOU.

WAIVER

The failure of any Party to seek redress for any violation of, or to insist upon the strict performance of, any term of this MOU will not prevent a subsequent violation of this MOU from being actionable by such Party.

**DRAFT MOU BETWEEN SITS AND CITY OF ATLANTA
FEBRUARY 28, 2007**

IN WITNESS WHEREOF, the City and BBI have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

SITS

ATTEST:
Sworn to and subscribed
Before me this ____ day
of _____, 2007.

By: _____
(print)
Its:

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

Commissioner,
Department of Watershed Management

Recommended:

Chief Operating Officer

APPROVED AS TO FORM:

City Attorney

**EXHIBIT “A”
INSURANCE REQUIREMENTS**

APPENDIX B
INSURANCE & BONDING REQUIREMENTS
Memorandum of Understanding between the City of Atlanta & BBI

A. Preamble

The following requirements apply to all work under the Agreement. Compliance is required by Contractor/Consultant and all subcontractors/sub-consultants at any tier. **To the extent permitted by applicable law, the City of Atlanta ("City") reserves the right to adjust or waive any insurance or bonding requirements contained in this Appendix B and applicable to the Agreement.**

1. Evidence of Insurance Required Before Work Begins

No work under the Agreement may be commenced until all insurance and bonding requirements contained in this Appendix B or required by applicable law have been complied with and evidence of such compliance satisfactory to City as to form and content has been filed with City. Contractor/Consultant must provide City with a Certificate of Insurance that clearly and unconditionally indicates that Contractor/Consultant has complied with all insurance and bonding requirements set forth in this Appendix B and applicable to the Agreement. In accordance with the solicitation documents applicable to the Agreement and at the time Contractor/Consultant submits to City its executed Agreement, Contractor must satisfy all insurance and bonding requirements required by this Appendix B and applicable law and provide the required written documentation to City evidencing such compliance. In the event that Contractor/Consultant does not comply with such submittal requirements within the time period established by the solicitation documents applicable to the Agreement, City may, in addition to any other rights City may have under the solicitation documents applicable to the Agreement or under applicable law, make a claim against any bid security provided by Contractor/Consultant.

2. Minimum Financial Security Requirements

All companies providing insurance required by this Appendix B must meet certain minimum financial security requirements. These requirements conform to the ratings published by A.M. Best & Co. in the current Best's Key Rating Guide - Property-Casualty. The ratings for each company must be indicated on the documentation provided by Contractor/Consultant to City certifying that all insurance and bonding requirements set forth in this Appendix B and applicable to the Agreement have been unconditionally satisfied.

For all agreements, regardless of size, companies providing Insurance or Bonds under the Agreement must have a current:

- i) Best's Rating not less than A- and current;
- ii) Best's Financial Size Category not less than Class IX, and
- iii) Companies must be authorized to conduct and transact insurance contracts by the Insurance Commissioner, State of Georgia. Furthermore, all bid, performance and payment bonds must be a U.S. Treasury Circular 570 listed company.

If the issuing company does not meet these minimum requirements, or for any other reason is or becomes unsatisfactory to City, City will notify Contractor/Consultant in writing. Contractor/Consultant must promptly obtain a new policy or bond issued by an insurer acceptable to City and submit to City evidence of its compliance with these conditions.

Contractor's/Consultant's failure to comply with all insurance and bonding requirements set forth in this Appendix B and applicable to the Agreement will not relieve Contractor/Consultant from any liability under the Agreement. Contractor's/Consultant's obligations to comply with all insurance and bonding requirements set forth in Appendix B and applicable to the Agreement will not be construed to conflict with or limit Contractor's/Consultant's indemnification obligations under the Agreement.

3. Insurance Required for Duration of Contract

All Insurance and Bonds required by this Appendix B must be maintained during the entire term of the Agreement, including any renewal or extension terms, and until all work has been completed to the satisfaction of City.

4. Mandatory Cancellation Notices

This provision applies to insurance under which the City is an additional insured and all bonds required under this Appendix B. City must, without exception, be given not less than thirty (30) days prior written notice of the proposed cancellation of any insurance or bonds required by this Appendix B for other than non-payment of premium or for any material change in any insurance or bond. City must, without exception, be given not less than ten (10) days prior written notice of the proposed cancellation of any insurance or bonds required by this Appendix B due to non-payment of premium. Confirmation of these mandatory notice requirements must appear on any Certificate of Insurance and all Bonds provided to City by Contractor/Consultant as evidence of its compliance with this Appendix B.

City will accept no documentation from Contractor/Consultant that imposes conditions on the insurance and bonding requirements contained in this Appendix B or required by applicable law. City will also not accept any Certificate of Insurance that contains language similar in intent to the following: "Should any of the above-described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail ____ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives."

Contractor/Consultant must also submit to City for each policy of insurance required to be provided pursuant to this Appendix B an Endorsement evidencing City's rights to unconditional notice of a policy cancellation in accordance with this Appendix B, if the underlying policy does not already contain such compliant cancellation notice requirements and an endorsement is required to amend them to comply with this Appendix B.

All cancellation notices should be sent to the attention of **Risk Management** at **68 Mitchell Street, Suite, 9100, Atlanta, Georgia 30303**.

5. City of Atlanta as Additional Insured

The City must be covered as Additional Insured under all Insurance required by this Appendix B and such insurance must be primary with respect to the Additional Insured, vesting with City all rights under the insurance policies that the primary insured has. Confirmation of this must unconditionally appear on any **Certificate of Insurance** provided by Contractor/Consultant as evidence of its compliance with this Appendix B. **Contractor/Consultant must also submit to City an Additional Insured Endorsement evidencing City's rights as an Additional Insured for each policy of insurance under which it is required to be an additional insured pursuant to this Appendix B.**

6. Mandatory Sub-consultant Compliance

Contractor/Consultant must incorporate these Insurance/Bonding Requirements in each contract it has with any other subcontractor/subconsultant and must ensure that each subcontractor/subconsultant flows down these Insurance/Bonding Requirements to all tiers providing services pursuant to this Appendix B.

7. Authorization and Licensing of Agent

Each and every agent acting as an authorized representative on behalf of a company providing insurance or bonding under this Appendix B must provide a written warranty to City in the form of a Power of Attorney,

Certification or other document City deems appropriate indicating unconditionally that: [i] such authorized representative is licensed to do business in the State of Georgia; [ii] each company is authorized by the Georgia Insurance Commissioner to conduct business in the State of Georgia and is in good standing with such office; and [iii] specific authorization has been granted by each company for the authorized representative to execute all documents necessary to ensure compliance by Contractor/Consultant with the insurance and bonding requirements of this Appendix B and to bind coverage.

B. General Liability Insurance

Contractor/Consultant must procure and maintain General Liability Insurance in an amount not less than **\$1,000,000** Bodily Injury and Property Damage combined single limit. The following specific extensions of coverage must be provided:

1. Comprehensive Form;
2. Contractual Insurance-(Blanket or specific applicable to this Agreement);
3. Personal Injury;
4. Broad Form Property Damage;
5. Premises – Operations; and
6. Products Completed- Operations.

D. Hold Harmless Agreement

In addition to its agreement to obtain and maintain the insurance as set forth herein above, Consultant agrees to indemnify and hold harmless the City of Atlanta, its officers, agents and employees from any and all claims against the City of Atlanta, its officers, agents or employees which arise out of any negligent act or omission of Consultant or any sub-consultant employed by the Consultant or any of their officers, agents or employees, and any and all claims which result from any condition created or maintained by the Consultant or any sub-consultant employed by the Consultant or any of their officers, agents or employees, which condition was not specified to be created or maintained by this Agreement. Consultant further agrees that its agreement to indemnify and hold harmless the City of Atlanta, its officers, agents and employees shall not be limited to the limits of the liability insurance under this Agreement and the attached specifications.

**DRAFT MOU BETWEEN CITY OF ATLANTA AND SITS
FEBRUARY 28, 2007**

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF ATLANTA AND BBI**

This Memorandum of Understanding ("MOU"), dated this ____ day of _____, 2007, is between the City of Atlanta ("City") and Soccer In The Streets, Inc. ("SITS") (collectively, "the Parties").

Background

The City of Atlanta, Department of Watershed Management ("Watershed") acquired certain real property, said property consisting of a city block within the Vine City community in Atlanta, Georgia, located along Rock St. on the Southern boundary, Vine St. on the western boundary, Tyler St. on the northern boundary, and Walnut St. on the eastern boundary ("Property"), which property was acquired for the purpose of constructing a sewer project and maintaining the Property as green space.

SITS is a Georgia non-profit corporation whose purpose is purpose is to sponsor and provide soccer programs for children within the inner city. SITS has utilized open spaces within inner cities in various states, including local programs in the metropolitan Atlanta area to provide soccer programs for children.

The City and SITS now desire to make the Property temporarily available for soccer programs through SITS subject to and conditioned on utilizing the property consistent with Watershed's intended use of the Property. The Parties desire to enter into an MOU to effectuate the utilization of the Property for soccer programs, as described in the terms and conditions below.

NOW THEREFORE in consideration of the mutual covenants contained herein as well as other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereto agree as follows:

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1.2. SITS shall be permitted to place only temporary, removable and non-permanent facilities and equipment on the Property to facilitate the Soccer Activity (for

example, temporary soccer goals and benches), after express permission from the Commissioner of Watershed or his designee. SITS shall be solely responsible for the maintenance and security of such fixtures and shall remove such fixtures upon the termination of this MOU.

1.3. SITS shall be permitted to improve the Property in such a manner that would facilitate and promote the Soccer Activity (segregating the property into individual fields with temporary equipment, and planting grass) at the sole cost of SITS. No permanent fencing is permitted. Such activity shall not include any land disturbing activities, using mechanized or other equipment that would require a land disturbance permit. All such activity by SITS on the Property shall be consistent with and shall not interfere with Watershed's intended use of the Property.

1.4. The City shall maintain its authority to make final decisions regarding the Soccer Activity and shall exercise this authority in the spirit of good faith cooperation with SITS. Such decisions shall be made by the Commissioner of the Department of Watershed Management. The City expressly reserves all rights and interests to its ownership of the Property and superior use of the Property for its intended use for water and sewer purposes and in no way relinquishes such interest by way of this MOU. SITS expressly acknowledges that the permissions granted in this MOU is in no way constitutes a dedication or use of the Property as a public park; and further acknowledges that such permissions granted in this MOU are expressly conditioned and subject to Watershed's interest and uses of the Property.

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1.6. SITS shall have sole responsibility for raising any funds necessary for Property Improvements or Soccer Activity.

1.7. SITS shall be responsible for any claim, damage, loss or expense arising from the Soccer Activity on the Property. SITS agrees to obtain and maintain insurance as set forth in Exhibit "A" and agrees to hold harmless and indemnify the City, its officers, agents and employees from any and all claims against the City, its officers, agents, and employees which arise out of any negligent act or omission of or any condition created or maintained by SITS, subcontractors, employees or any of their officers, agents or employees (including SITS). Nothing in this provision shall be interpreted to limit the indemnification or hold harmless requirements to the limits of the insurance requirements of this MOU.

Comment [RS1]: We need to discuss with you and our risk management folks what insurance we will require, which will become Ex. B. Ex. A will include a requirement to be named an additional insured. I hope that your current limits will suffice and the city will simply need a new certificate of accord for this MOU.

1.8. Any personnel employed by or volunteering on behalf of SITS shall be deemed "employees" or "volunteers" respectively of SITS, and shall not be deemed employees or volunteers of the City. SITS shall remain responsible for the supervision, management and control of such employees and volunteers and any payroll, taxation or other employment obligation incident to their work.

1.9 SITS shall maintain records and accounts in connection with the performance of this MOU that will accurately document all funds received by SITS and all costs incurred by SITS, both direct and indirect, of whatever nature, for a period of three (3) years from the expiration of this MOU, unless otherwise specified by applicable law. The City of Atlanta or its designated representatives shall have the right to examine and copy the records and accounts at all reasonable times, with advance notification. The City reserves the right to audit SITS's records and accounts. Any such audit will be commenced within one year of the expiration of this MOU.

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1.12. The City shall tender the Property for SITS's use in an "as-is" condition. The City shall not be responsible for any improvements to the Property, such as utilities, etc., that SITS may deem necessary for the Soccer Activity.

1.13. SITS shall maintain the Property in a neat and orderly manner.

1.14. SITS acknowledges and agrees that the use of the Property is temporary until such time that the City identifies a need to utilize the Property for construction of a water or sewer project or otherwise a water or sewer use ("City Project") which, in the City's determination and discretion, would require SITS to discontinue its use. It is estimated that a City Project will commence two (2) years from the date of this MOU. Upon a determination by Watershed that Watershed needs to utilize the Property for a City Project and that the uses and permissions granted herein are inconsistent with Watershed's needs for the Property, Watershed shall provide 60 days written notification to SITS to terminate this MOU, at which time SITS shall cease all Soccer Activity, vacate the Property and remove all temporary fixtures, equipment and belongings of SITS from the Property. At such time, SITS shall leave the Property in as good condition as existed at the time it assumed use of the Property.

Section 2. Term of MOU.

The term of this MOU shall be for a period of two years from the effective date of this MOU or upon notice from the City pursuant to Section 1.14 above, whichever occurs first.

Section 3. Termination of MOU and Default.

The City may terminate this MOU upon 30 days written notice in the event that the City determines that SITS has materially defaulted on fulfilling the terms and obligations of this MOU.

Section 4. Miscellaneous. Provisions.

ENTIRE MOU.

This MOU supersedes all prior discussions and Agreements or MOUs among the parties with respect to the subject matter hereof. This MOU shall not be modified or amended in any respect except by written instrument executed by or on behalf of the Parties in the same manner as this MOU is executed and specifically referencing such a modification or amendment.

BINDING EFFECT

This MOU shall inure to the benefit of and be binding upon the Parties hereto, their heirs, successors, executors and assigns.

SEVERABILITY

In the event any provision or portion of this MOU is held by any Court of competent jurisdiction to be invalid or unenforceable, such holding shall not affect the remainder hereof, and the remaining provisions shall continue in full force and effect to the same extent as would have been the case had such invalid or unenforceable provisions or portion never been a part hereof.

FURTHER ASSURANCES

On and after the Effective Date, each Party shall, at the request of any other, make, execute and deliver or obtain and deliver all such certificates, resolutions and other instruments and documents, and shall do or cause to be done all such other things which any Party may reasonably require to effectuate the provisions and the intentions of this MOU.

CAPTIONS

All captions, headings, paragraphs, subparagraphs, letters and other reference captions are solely for the purpose of facilitating convenient reference to this MOU, shall not supplement, limit or otherwise vary the text of this MOU in any respect, and shall be wholly disregarded when interpreting the meaning of any terms or provisions hereof. All references to particular paragraphs and subparagraphs by number refer to the text of the paragraphs or subparagraphs so numbered in this MOU.

GENDER

Words of any gender used in this MOU shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural, and vice-versa, unless the context requires otherwise.

EXHIBITS

Each and every exhibit referred to or otherwise mentioned in this MOU is attached to this MOU and is, and shall be, construed to be made a part of this MOU by such reference or other mention at each point at which such reference or other mention occurs, in the same manner and with the same effect as if each exhibit were set forth in full at length every time it is referred to or otherwise mentioned.

REFERENCES

All references to paragraphs or subparagraphs shall be deemed to refer to the appropriate paragraph or subparagraphs of this MOU. Unless otherwise specified in this MOU, the terms "herein," "hereof," "hereinafter," "hereunder" and other terms of like or similar import shall be deemed to refer to this MOU as a whole, and not to any particular paragraph or subparagraph hereof.

RIGHTS CUMULATIVE

Except as expressly limited by the terms of this MOU, all rights, powers and privileges conferred hereunder shall be cumulative and not restrictive of those provided at law or in equity.

NOTICES

All notices, requests, demands or other communications required or permitted to be given hereunder shall be in writing and shall be addressed and delivered by hand or by certified mail, return receipt requested, or by UPS Next Day Air Note or overnight courier, or by hand delivery by reputable courier, to each Party at the addresses set forth below. Any such notice, request, demand or other communication shall be considered given or delivered, as the case may be, on the date of receipt. Rejection or other refusal to accept or inability to deliver because of changed address of which proper notice was not given shall be deemed to be receipt of the notice, request, demand or other communication. By giving prior written notice thereof, any Party may from time to time and at any time change its address for notices hereunder. Legal counsel for the respective

**DRAFT MOU BETWEEN SITS AND CITY OF ATLANTA
FEBRUARY 28, 2007**

Parties may send to the other Parties any notices, requests, demands or other communications required or permitted to be given hereunder by such Party.

To City:	Commissioner of Watershed Management Suite 5400 55 Trinity Avenue Atlanta, Georgia 30303
and	Chief Operating Officer Office of the Mayor, Suite 2400 55 Trinity Avenue Atlanta, Georgia 30303
with a copy to:	City Attorney 68 Mitchell St., SW Suite 4100 Atlanta, Georgia 30303
SITS	2323 Perimeter Park Drive, NE Atlanta, Ga 30341

AMENDMENT AND ASSIGNMENT

The interest of the parties may not be assigned without prior written consent from the other party. This MOU shall not be amended except in writing by both parties.

GOVERNING LAW

This MOU, and the rights and obligations of the parties hereunder, shall be governed by and construed in accordance with the laws of the State of Georgia, without giving effect to principles of conflicts of laws thereof. The Parties hereby fix jurisdiction and venue for any action brought with respect to this MOU in Fulton County, Georgia.

NO PARTNERSHIP

This MOU shall not be interpreted or construed to create an association, joint venture or partnership between the Parties, nor to impose any partnership obligations or liabilities on any Party. Furthermore, no Party shall have any right, power or authority to enter into any MOU or undertaking of or on behalf of, to act as or be an agent or representative of, or to otherwise bind any other Party.

TIME OF ESSENCE

Time is and shall be of the essence in this MOU.

WAIVER

The failure of any Party to seek redress for any violation of, or to insist upon the strict performance of, any term of this MOU will not prevent a subsequent violation of this MOU from being actionable by such Party.

**DRAFT MOU BETWEEN SITS AND CITY OF ATLANTA
FEBRUARY 28, 2007**

IN WITNESS WHEREOF, the City and BBI have caused this MOU to be executed by their duly authorized officials, the day and year first above written.

SITS

ATTEST:
Sworn to and subscribed
Before me this _____ day
of _____, 2007.

By: _____
(print)
Its:

ATTEST:

CITY OF ATLANTA:

Municipal Clerk (Seal)

SHIRLEY FRANKLIN, MAYOR

RECOMMENDED:

Commissioner,
Department of Watershed Management

Recommended:

Chief Operating Officer

APPROVED AS TO FORM:

City Attorney

EXHIBIT “A”
INSURANCE REQUIREMENTS

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Legislative Counsel (Signature): Megan S. Middleton

M S Middleton

Contact Number: 6207

Originating Department: Watershed Management

Committee(s) of Purview: City Utilities

Council Deadline: March 19, 2007

Committee Meeting Date(s): March 27, 2007 Full Council Date: April 16, 2007

Commissioner Signature

[Signature]

3.9.07

CAPTION

A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A MEMORANDUM OF UNDERSTANDING WITH SOCCER IN THE STREETS, INC., A NON-PROFIT ORGANIZATION, TO ALLOW FOR THE USE OF CERTAIN CITY OF ATLANTA PROPERTY LOCATED IN THE VINE CITY COMMUNITY FOR THE PURPOSE OF PASSIVE RECREATIONAL USES ON BEHALF OF THE DEPARTMENT OF WATERSHED MANAGEMENT; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any) \$00.00

Mayor's Staff Only

Received by Mayor's Office: 3.15.07 (date) *[Signature]* Reviewed by: *[Signature]*

Submitted to Council: 3/16/07 (date)